

S. 1260. A bill to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FRIST:

S. 1261. A bill to establish the Education Scholars Block Grant Program; to the Committee on Labor and Human Resources.

By Mr. FAIRCLOTH:

S. 1262. A bill to authorize the conveyance of the Coast Guard Station, Ocracoke, North Carolina; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN:

S. 1263. A bill to establish requirements regarding national tests in reading and mathematics; to the Committee on Labor and Human Resources.

By Mr. HARKIN (for himself, Mr. DASCHLE, Mr. LEAHY, and Mr. JOHN-SON):

S. 1264. A bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through enhanced enforcement; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DODD:

S. 1265. A bill to amend the Occupational Safety and Health Act of 1970 to expand the provisions to include construction safety requirements; to the Committee on Labor and Human Resources.

By Mr. HELMS:

S. 1266. An original bill to interpret the term "kidnapping" in extradition treaties to which the United States is a party; from the Committee on Foreign Relations; placed on the calendar.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAMM (for himself, Mr. DODD, Mr. DOMENICI, Mrs. BOXER, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. HAGEL, Mr. REID, Mr. WYDEN, Mr. ALLARD, Ms. MOSELEY-BRAUN, Mrs. MURRAY, and Mr. LIEBERMAN):

S. 1260. A bill to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

#### THE SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1997

Mr. GRAMM. Mr. President, I send a bill to the desk on behalf of myself, Senator DODD, Senator DOMENICI, Senator BOXER, Senator FAIRCLOTH, Senator FEINSTEIN, Senator HAGEL, Senator REID, Senator WYDEN, Senator ALLARD, Senator MOSELEY-BRAUN, Senator MURRAY, and Senator LIEBERMAN.

Mr. President, on December 22, 1995, the Senate took an extraordinary action in overriding President Clinton's veto of the Private Security Litigation Reform Act, Public Law 104-67. This major reform legislation was an effort to try to do something about frivolous lawsuits that were filed on a class-action basis against basically new, innovative companies.

These abusive lawsuits were literally a multibillion dollar tax imposed on new and innovative companies. They

were invariably filed on a class-action basis, where there was no real client. The cost of defense against such litigation was so high that normally the cases ended in large settlements out of court.

We passed a comprehensive bill to try to deal with that problem in Federal court. That bill made a combination of five major changes in the law. It said, first, that there had to be real clients; that if a lawyer was going to file a class-action suit, he had to be filing it on behalf of real shareholders, encouraged by a set of procedures where the largest shareholder in the class-action suit was in fact in charge of that suit.

Second, the legislation required that there be specificity with regard to what the company was alleged to have done wrong.

Third, it required a discovery process designed to get the facts out on the table, rather than a discovery process that was a tool for harassing defendants into settling the case.

Fourth, the legislation set up a system of proportional liability so that you could not simply sue in order to reach where the deep pockets were; you had to go after the real perpetrators of fraud.

Finally, it contained an attorney misconduct provision, which said that if the judge made a judgment—we require an initial judgment by law—that this was an abusive lawsuit, then the parties who had engaged in this abusive conduct would be forced to pay for the legal expenses of the company that was defending itself.

So strong was the support for this bill that we were able not only to pass it on a bipartisan basis, but we overrode the President's veto of the bill.

We held a hearing on July 24 of this year in the Securities Subcommittee, which I chair, to gauge whether or not the law was achieving its purposes. What we discovered from the nine witnesses, a broad cross-section of people—State regulators, companies that were subject to these suits, a former SEC Commissioner—was that while we had dealt with the problem in Federal court, we now were seeing a migration of these lawsuits to State courts with a real effort and apparently a successful effort to circumvent what we had done.

So, Mr. President, I have introduced this bill, with Senator DODD as my principal cosponsor—he is the ranking Democrat on the subcommittee—and with a broad cross-section of Republicans and Democrats to try to correct this problem. What our bill does is very simply this. It sets national standards for stocks that are traded on the national markets. What it says is that in the case of class-action suits, and class-action suits only, if a stock is traded on the national market, if it is a national stock, then the class-action suit has to be filed in Federal court. This does not apply to individual lawsuits. It applies only to class-action lawsuits, and it applies only to stocks that are traded nationally.

Legislatively, we have been moving toward national standards for national securities. The National Securities Markets Improvement Act, enacted overwhelmingly last year, created national rules for many aspects of our national securities markets. This is an important step continuing in that direction, a step in line with the principles lying behind the commerce clause of the Constitution.

Mr. President, I would also like to take this opportunity to notify my colleagues that, even though we have a relatively short amount of time left in this session of Congress, the Securities Subcommittee will move quickly on this legislation, beginning with legislative hearings before we adjourn for the year.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1260

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Securities Litigation Uniform Standards Act of 1997".

#### SEC. 2. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

#### "SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

"(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

"(b) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

"(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

"(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

"(c) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

"(d) DEFINITIONS.—For purposes of this section the following definitions shall apply:

"(1) CLASS ACTION.—The term 'class action' means any single lawsuit, or any group of lawsuits filed in or pending in the same court involving common questions of law or fact, in which—

"(A) damages are sought on behalf of more than 25 persons;

"(B) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

"(C) one or more of the parties seeking to recover damages did not personally authorize the filing of the lawsuit.

"(2) COVERED SECURITY.—A security is a 'covered security' if it satisfies the standard

for a covered security specified in paragraph (1) or (2) of section 18(b) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.”.

(2) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by striking “and, concurrent with State and Territorial courts,” and inserting “and, concurrent with State and Territorial courts, except as provided in section 16 with respect to class actions.”; and

(B) by striking “No case arising under this title and brought in any State court of competent jurisdiction shall be removed” and inserting “Except as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed”.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(1) in subsection (a), by striking “The rights and remedies” and inserting “Except as provided in subsection (f), the rights and remedies”; and

(2) by adding at the end the following new subsection:

“(f) LIMITATIONS ON REMEDIES.—

“(1) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

“(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

“(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

“(2) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

“(3) DEFINITIONS.—For purposes of this subsection the following definitions shall apply:

“(A) CLASS ACTION.—The term ‘class action’ means any single lawsuit, or any group of lawsuits filed in or pending in the same court involving common questions of law or fact, in which—

“(i) damages are sought on behalf of more than 25 persons;

“(ii) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

“(iii) one or more of the parties seeking to recover damages did not personally authorize the filing of the lawsuit.

“(B) COVERED SECURITY.—A security is a ‘covered security’ if it satisfies the standard for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.”.

(c) APPLICABILITY.—The amendments made by this section shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

Mr. DODD. Mr. President, I am very pleased this afternoon to rise along with my colleague, Senator GRAMM of Texas, who spoke a few moments ago, on a bill that the two of us are introducing together. I regret that I wasn't on the floor at the time he made his remarks. But I appreciate very much his leadership on this issue.

We are introducing a bill called the Securities Litigation Uniform Standards Act of 1997.

Just about 2 years ago, I stood here as part of a successful effort to restore the integrity and fairness of our private securities litigation system.

It's probably appropriate at this juncture to remind ourselves just how important the private litigation system has been in maintaining the integrity of our capital markets.

It is highly questionable whether our markets would be as deep, as liquid, as strong, as transparent, were it not for our system of maintaining private rights of action against those who commit fraud.

It is precisely because of the importance of this system, that the depths to which it had sunk by 1995 was so very troubling.

The system was no longer a mechanism for aggrieved investors to seek justice and restitution, but was instead a means for enterprising attorneys to manipulate its procedures for their own considerable profit and to the detriment of legitimate companies and investors across the Nation.

I could easily spend all of my time today recounting the cases of abusive and frivolous litigation that were hindering our growth industries; suffice to say that the flaws in the litigation system not only threatened the viability of private rights of action, but also presented a serious threat to the growth and success of key industries across the Nation.

Now that we are 2 years out from enactment of the reform bill, it is easy to see that many of the reforms are working well and that aggrieved investors still have access to the courthouse.

However, there is one development since the enactment of the reform law that has the potential to undermine our good work and send us back to the days of litigation frenzy.

This development is the significant increase in securities fraud class actions filed in State court.

Prior to congressional enactment of the reform law in 1995, securities fraud class actions in State court were almost unheard of. People went to the Federal courts.

But since we reformed the Federal system, there has been substantial increases in State court filings both in 1996 and 1997.

It is not unreasonable to assume that it is the weaker, even abusive claims, that are now finding a home in State court that they no longer have in Federal court.

The development of differing standards in State courts is troubling not only to this Senator, but also to the President. In a letter the President sent to me on this subject in July, he stated:

The possibility of change in one or more States' securities laws similar to those proposed [last year] in California's Proposition 211 suggests that there may be a need to reconsider the appropriate balance of Federal

and State roles in securities law. As I said when I opposed Proposition 211 last August, the proliferation of multiple and inconsistent standards could undermine national law.

In April, the Securities and Exchange Commission conducted a survey for the President, on the effect of the reform act; one of the survey's conclusions was:

To the extent that State courts can be used to avoid the discovery stay in cases that would otherwise have been brought in Federal court, one of the goals of the reform act may be frustrated.

This migration of frivolous class actions to State court threatens the effectiveness of the reform act.

Not only is it reasonable to assume that more and more companies could become hostage to increased State litigation costs, but the prospect of State litigation, where there is no safe harbor for forward-looking statements, is right now having a chilling effect upon corporate disclosure of projections and other forward-looking information.

Let me just as an aside state how important it is for prospective investors to get as much disclosure from companies as they possibly can so that they can make intelligent decisions about whether to invest their hard-earned dollars in these companies. Mr. President, this is a question of getting as much information, as I said, from companies. What we had in the Federal law was, of course, a safe harbor to allow for statements to be made that could then not be used against the corporation in some frivolous lawsuit.

Now, reasonable people, of course, may disagree with the magnitude of the State litigation problem as it exists today. I would be first to admit that as well. I do not want to suggest to my colleagues that we have some overwhelming problem on our hands.

But whether you believe that it is a small, medium, or even large problem today, as some do, it is a less important question, in my view, than whether you believe it is a problem that is destined to get worse. I think on that everyone can agree.

Again, I think the Securities and Exchange Commission survey is instructive on this point. I quote from the report.

... if State law provides advantages to plaintiffs in particular case, it is reasonable to expect that plaintiffs' counsel will file suit in State court.

The plain English translation: any plaintiffs' attorney worth his salt is going to file in State court if he feels it will give him an advantage.

SEC Commissioner Steve Wallman succinctly outlined the harm that the proliferation of State class actions is having on securities system when he said that “this phenomenon is clearly balkanizing the Federal securities laws.”

In testimony submitted to the Securities Subcommittee in July, Commissioner Wallman also pointed out that the debate over establishing a national standard for litigation on national securities is one that should take place,

even if there was no burgeoning problem on the State level:

The issue of pre-emption is broader than the potential effectiveness of the reform act, even though the reform act's effectiveness may be the current catalyst for raising the matter.

Rather than permit or foster fragmentation of our national system of securities litigation, we should give due consideration to the benefits flowing to investors from a uniform national approach. That analysis can be pursued, and conclusions reached, regardless of whether one believes we now know—or will, within any reasonable time frame, know—the definitive impact of the reform act.

The idea of creating a national standard for nationally traded securities is consistent with the recent trend in Congress, the SEC, and in the States themselves, to redefine the relationship between the States and the Federal Government on securities issues.

SEC Chairman Arthur Levitt, in discussing securities regulation, provided a perspective that should guide our debate over securities litigation:

The current system of dual Federal-State regulation is not the system that Congress—or the Commission—would create today if we were designing a new system. While securities markets today are global, issuers and securities firms must still [comply with] 52 separate jurisdictions. . . . It appears that an appropriate balance can be attained in the Federal-State arena that better allocates responsibilities, reduces compliance costs and facilitates capital formation, while continuing to provide for the protection of investors.

The point is if we are beginning de novo you wouldn't set up this situation. Obviously, we are not going to scrap it all. But we ought to try to reform it in a way that reflects the way we are today.

The principle of national treatment for national securities trading on national exchanges is as solid for legislation on securities litigation as it was for securities regulation.

The legislation that we are introducing today, if enacted, will allow Congress to address this State litigation problem before it gets completely out of control.

It will do so in a very targeted and narrow way, essentially preempting only those class actions that have recently migrated to State court, while leaving traditional State court actions and procedures solidly in place.

First, the legislation applies only to class actions, which are defined as those actions in which damages are sought on behalf of more than 25 people, one or more parties seek damages on behalf of other unnamed parties, or one or more of the parties did not personally authorize the suit.

Actions involving less than 25 people would not be affected.

Second the legislation is limited only to those securities that are listed on one of the three national stock exchanges—the New York, American, and NASDAQ stock market. Our legislation uses the definition of “covered security” that was used to preempt State

regulation in last year's National Securities Markets Improvement Act.

The legislation does not affect any State enforcement action, whether civil or criminal. State regulators retain their full authority to bring enforcement actions in any venue allowed under State law.

In fact, the California Securities Regulator testified very strongly in support of establishing uniform national litigation standards for nationally traded securities.

Let me again emphasize what this bill does not do: it does not affect individual actions in State court; it does not protect penny stocks, delisted securities, roll-ups, or securities sold only within a single State; it does not protect bad brokers or investment advisors; it does not impact on State regulators.

This legislation has been carefully crafted only to affect those types of class actions that are appropriately heard on the Federal level.

To the extent that there are technical modifications needed to ensure that no other State actions are impacted, I certainly pledge that we will make those changes to keep the bill focused only on the problem area.

Mr. President, our capital markets are the envy of the world and America is the undisputed leader in the financial services industry.

But if we are to remain the global leader, if our markets are to remain ahead of those in London, Frankfurt, Tokyo or Hong Kong, we must create uniformity and certainty.

How can we expect to get foreign companies to list on our exchanges if we have to explain that they will face not only our very tough Federal standards on securities fraud, but also the possibility of 50 constantly changing State standards.

That's not a reasonable proposition for a foreign company, or even for an American one.

This legislation will create certainty and establish uniformity without impinging on the traditional and important role that States play in combating fraud.

I urge my colleagues to cosponsor this bill and I look forward to returning to the floor soon to see this bill pass the Senate.

Senator GRAMM of Texas and I feel that this is a solid piece of legislation. Again, the problem is not totally out of hand yet. The trend lines are clear. We are not infringing upon State courts or State regulators and State traded securities but only nationally traded securities on the three national markets.

So we end up with a national standard which is what we intended when we passed the Reform Act of 2 years ago.

With that, Mr. President, I again thank my colleagues for their patience. I urge them to take a good look at the piece of legislation which Senator GRAMM of Texas and I have introduced, and urge them to cosponsor the bill and join us in passing this legislation.

By Mr. FRIST:

S. 1261. A bill to establish the Education Scholars Block Grant Program; to the Committee on Labor and Human Resources.

#### THE TEACHER INVESTMENT ACT

Mr. FRIST. Mr. President, I recently had the opportunity to hold forums on education across my home State of Tennessee. I traveled to Nashville, Memphis, and Knoxville to listen to a variety of people with expertise in educational issues, such as teachers, students, principals, and school board members. These events were a wonderful opportunity for me to listen. While a variety of educational issues were explored at each of the forums, the need for an ample, qualified teaching force was a predominant theme at each forum.

I would like to note that Tennessee's 1997 Teacher of the Year, Ms. Cathy Pihl, was both present at the Memphis forum on education and is here with us today. I am also pleased that Mr. Jon Hubble, Tennessee's 1997 Teacher of the Year finalist, is also here. Cathy is a fourth grade teacher at Kate Bond Elementary School in Memphis, TN, with 8 years of teaching experience. Jon, who has 10 years of teaching experience, teaches social studies to seventh and eighth grade students at Wright Middle School in Nashville, TN. I am delighted to have both of these outstanding teachers here with us today. We must encourage and enable more students to follow in Cathy and Jon's footsteps.

In addition to what I heard in Tennessee about the need for qualified teachers, recent statistics highlight the need for a strong teaching force across the Nation. Elementary and secondary school enrollments are expected to reach an all-time high this fall—52.2 million students. Approximately 2 million more teachers will be needed for the next decade.

The Teacher Investment Act, which I am introducing today, would allow State education agencies to award scholarships to students who are studying to become elementary and secondary school teachers. These scholarships would not need to be repaid provided the students meet certain criteria.

Specifically, scholarships may go to both undergraduate and graduate students who are committed to becoming teachers. In addition, the individual must have demonstrated outstanding academic achievement in college and must commit to teaching for 2 years in an elementary or secondary school.

Quite simply, we need more Cathy's and Jon's. One way to achieve this goal is to invest resources to prepare a new generation of teachers. In return, the scholarship recipients must invest at least 2 years in the teaching field. The Teacher Investment Act makes a serious commitment to both our future teachers and students. However, as we discuss our future teachers, I, again, would like to highlight the important achievements and contributions of two

of today's teachers—Jon Hubble and Cathy Pihl, who represent Tennessee's teachers so well.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1261

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# SECTION 1. EDUCATION SCHOLARS BLOCK GRANT PROGRAM.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

## "Subpart 9—Education Scholars Block Grant Program

### "SEC. 420G. SHORT TITLE; PURPOSE; AUTHORIZATION OF APPROPRIATIONS.

"(a) SHORT TITLE.—This subpart may be cited as the 'Teacher Investment Act'.

"(b) PURPOSE.—It is the purpose of this subpart—

"(1) to attract more of our Nation's most academically gifted students into teaching careers in elementary and secondary education;

"(2) to retain in teaching our Nation's best teachers who have demonstrated promise in, and a commitment to, a teaching career;

"(3) to increase the public status of a teaching career in elementary and secondary education;

"(4) to address the anticipated shortage of teachers in the next several decades; and

"(5) to provide States with the flexibility to integrate State teacher education initiatives with Federal teacher scholarship support.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 1998 and each of the 4 succeeding fiscal years.

### "SEC. 420H. SCHOLARSHIP AUTHORIZED.

"(a) PROGRAM AUTHORITY.—The Secretary may award grants to States from allotments under section 420I to enable the States to provide scholarships to individuals who—

"(1)(A) have completed at least half of the academic credit requirements for graduation from an institution of higher education with a bachelor's degree, or with a graduate degree that prepares the individual for licensure or certification as an elementary school or secondary school teacher;

"(2) are admitted to or enrolled in an institution of higher education;

"(3) have demonstrated outstanding academic achievement while enrolled in an institution of higher education; and

"(4) are committed to becoming or remaining elementary school or secondary school teachers.

"(b) PERIOD OF AWARD.—A State shall determine the scholarship period, except that a scholarship recipient shall not receive a scholarship award for more than 2 years of study at any institution of higher education.

### "SEC. 420I. ALLOTMENT AMONG STATES.

"(a) ALLOCATION FORMULA.—From the sums appropriated pursuant to the authority of section 420G(c) for any fiscal year, the Secretary shall allot to each State that has an agreement under section 420J an amount equal to \$5,000 multiplied by the number of scholarships determined by the Secretary to be available to such State in accordance with subsection (b).

"(b) NUMBER OF SCHOLARSHIPS AVAILABLE.—The number of scholarships to be made available in a State for any fiscal year shall bear the same ratio to the number of scholarships made available to all States as the State's population ages 5 through 17

bears to the population ages 5 through 17 in all the States, except that not less than 10 scholarships shall be made available to any State.

"(c) USE OF CENSUS DATA.—For the purpose of this section, the population ages 5 through 17 in a State and in all the States shall be determined by the most recently available data from the Bureau of the Census that the Secretary determines is satisfactory.

### "SEC. 420J. STATE AGREEMENTS.

"The Secretary shall enter into an agreement with each State desiring to participate in the scholarship program under this subpart. Each such agreement shall include provisions to ensure that—

"(1) the State educational agency will administer the program in the State;

"(2) the State educational agency will comply with the provisions of this subpart;

"(3) the State educational agency will conduct outreach activities to publicize the availability of the scholarships to all eligible postsecondary students in the State, with particular emphasis on activities designed to ensure that students from low-income and moderate-income families have access to the information regarding the opportunity for full participation in the program; and

"(4) the State educational agency will pay to each individual in the State who is awarded a scholarship the cost of tuition and fees at an institution of higher education for a year, except that such payment shall not exceed \$5,000.

### "SEC. 420K. SELECTION OF EDUCATION SCHOLARS.

"(a) ESTABLISHMENT OF CRITERIA.—The State educational agency shall establish the criteria for selection of scholars. Such criteria shall—

"(1) fulfill the purpose of the subpart in accordance with a State's projected elementary school and secondary school teaching needs and priorities; and

"(2) require a scholarship recipient to have demonstrated outstanding academic achievement and a commitment to a teaching career, as determined by the State educational agency.

"(b) LIMITATIONS.—In awarding scholarships under this subpart, the State educational agency shall provide—

(1) not less than 75 percent of the scholarships to individuals who do not possess a bachelor's degree; and

(2) not more than 25 percent of the scholarships to individuals who are pursuing a graduate degree.

"(c) CONSULTATION REQUIREMENT.—In carrying out this subpart, the State educational agency shall consult with school administrators, school boards, teachers, and counselors.

### "SEC. 420L. AWARD AMOUNT; SCHOLARSHIP CONDITIONS.

"(a) AWARD AMOUNT.—Each individual awarded a scholarship under this subpart shall receive an award for the cost of tuition and fees at an institution of higher education of not more than \$5,000 for an academic year of study.

"(b) CONDITIONS.—Each State educational agency receiving a grant under this subpart shall establish procedures to ensure that each scholarship recipient—

"(1) pursues a course of study at an institution of higher education;

"(2) maintains a 3.0 grade point average on a 4.0 scale; and

"(3) enters into an agreement to teach in accordance with section 420M(a).

### "SEC. 420M. SCHOLARSHIP AGREEMENT; REPAYMENT PROVISIONS.

"(a) SCHOLARSHIP AGREEMENT.—Each recipient of a scholarship under this subpart shall enter into an agreement with the State educational agency under which the recipient shall—

"(1) within the 2-year period after completing the education for which the scholarship was awarded, teach for a period of 2 years as an elementary school or secondary school teacher in the State served by the State educational agency;

"(2) provide the State educational agency with evidence of compliance, determined pursuant to regulations promulgated by the Secretary, with the provisions of paragraph (1); and

"(3) repay all or part of the scholarship award received in accordance with subsection (b) in the event the conditions of paragraph (1) are not complied with, except as provided by section 420N.

"(b) REPAYMENT PROVISIONS.—A recipient of a scholarship found by the State educational agency to be in noncompliance with the agreement entered into under subsection (a) shall be required to repay to the State educational agency a pro rata amount of such scholarship assistance received, plus interest, at the rate of 8 percent or the rate applicable to loans in the applicable period under part B of this title, whichever is lower, and where applicable, reasonable collection fees, on a schedule to be prescribed by the Secretary pursuant to regulations promulgated under this subpart.

### "SEC. 420N. EXCEPTIONS TO REPAYMENT PROVISIONS.

"(a) DEFERRAL DURING CERTAIN PERIODS.—A scholarship recipient shall not be considered in violation of the agreement entered into pursuant to section 420M(a) during any period in which the recipient—

"(1) is pursuing a full-time course of study related to the field of teaching at an institution of higher education;

"(2) is serving, not in excess of 3 years, as a member of the Armed Forces;

"(3) is temporarily totally disabled for a period of time not to exceed 3 years as established by the sworn affidavit of a qualified physician;

"(4) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

"(5) is seeking and unable to find full-time employment for a single period not to exceed 12 months; or

"(6) satisfies the provisions of additional repayment exceptions that may be prescribed by the Secretary in regulations promulgated under this subpart.

"(b) FORGIVENESS IF PERMANENTLY TOTALLY DISABLED.—A recipient shall be excused from repayment of any scholarship assistance received under this subpart if the recipient becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

### "SEC. 420O. CONSTRUCTION OF NEEDS PROVISIONS.

"Except as provided in section 471, nothing in this subpart, or any other Act, shall be construed to permit the receipt of a scholarship under this subpart to be counted for any needs analysis in connection with the awarding of any grant or the making of any loan under this Act or any other provision of Federal law relating to education assistance."

By Mr. FAIRCLOTH:

S. 1262. A bill to authorize the conveyance of the Coast Guard station, Ocracoke, NC; to the Committee on Commerce, Science, and Transportation.

CONVEYANCE AUTHORIZATION LEGISLATION

Mr. FAIRCLOTH. Mr. President, I am introducing this bill today to authorize the Department of Transportation to convey the Coast Guard station,

Ocracoke, NC, to the State of North Carolina, when the Coast Guard determines that it no longer needs to keep the facility.

This station is located on the southern end of Ocracoke Island, adjacent to the wharf where the ferries to and from Swan Quarter and Cedar Island dock. It is vital that these limited ferry facilities are expanded to meet the ever-growing demands of more and more traffic, and this Coast Guard station is ideal for this purpose. Since the port at Ocracoke is the southern termination of State highway 12 on the Outer Banks, these ferries are the only way to get residents and tourists across Pamlico Sound in the event of the need to evacuate when hurricanes threaten. The only other way off this stretch of the Outer Banks is the bridge at Roanoke Island, which is more than 75 miles to the north of Ocracoke.

The State also plans to use this surplus Coast Guard facility for educational purposes. While the ferry division has a need for the grounds and a portion of the station buildings, the remaining spaces can be used for coastal environmental study. Of course the Coast Guard will continue to have access to the docking facilities to any extent needed.

Mr. President, with the safety of the residents and of all our guests that visit the Outer Banks uppermost in my mind, I urge timely consideration and passage of this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1262

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. LAND CONVEYANCE, COAST GUARD STATION OCRACOCKE, NORTH CAROLINA.**

(a) **AUTHORITY TO CONVEY.**—The Secretary of Transportation may convey, without consideration, to the State of North Carolina (in this section referred to as the "State"), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, in Ocracoke, North Carolina, consisting of such portion of the Coast Guard Station Ocracoke, North Carolina, as the Secretary considers appropriate for purposes of the conveyance.

(b) **CONDITIONS.**—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That the State accept the property to be conveyed under that subsection subject to such easements or rights of way in favor of the United States as the Secretary considers to be appropriate for—

- (A) utilities;
- (B) access to and from the property;
- (C) the use of the boat launching ramp on the property; and
- (D) the use of pier space on the property by search and rescue assets.

(2) That the State maintain the property in a manner so as to preserve the usefulness of the easements or rights of way referred to in paragraph (1).

(3) That the State utilize the property for transportation, education, environmental, or other public purposes.

(c) **REVERSION.**—(1) If the Secretary determines at any time that the property conveyed under subsection (a) is not be used in accordance with subsection (b), all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry thereon.

(2) Upon reversion under paragraph (1), the property shall be under the administrative jurisdiction of the Administrator of General Services.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property conveyed under subsection (a), and any easements or rights of way granted under subsection (b)(1), shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the State.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions with respect to the conveyance under subsection (a), and any easements or rights of way granted under subsection (b)(1), as the Secretary considers appropriate to protect the interests of the United States.

By Mr. BINGAMAN:

S. 1263. A bill to establish requirements regarding national tests in reading and mathematics; to the Committee on Labor and Human Resources.

THE VOLUNTARY NATIONAL TESTING ACT OF 1997

Mr. BINGAMAN. Madam President, today as the House-Senate conferees are scheduled to meet again, I am introducing the Voluntary National Testing Act of 1997 for two main reasons: to clarify many of the misconceptions that have arisen since the Senate voted in favor of this approach, and—to counter the mistaken impression that support for voluntary national testing has eroded in recent weeks.

This legislation simply makes permanent the compromise approach that was approved overwhelmingly by the Senate last month.

While the Senate amendment gave NAGB, the governing board, authority for only fiscal year 1998, this legislation would provide permanent authority.

Otherwise, the language is identical to that amendment: it prevents anyone from being forced to take the test or attach any funding conditions on the test; transfers control immediately to the independent board, which will have full power to change any elements it deems necessary; and charges the board with revisiting key issues that have arisen so far, such as whether students should use calculators or whether there should be a test in a student's native language if needed.

Contrary to what some may think, there are many signs that support for voluntary national tests remains strong despite scare tactics and "education-ese" being used by its opponents.

Public opinion—as well as the views of almost every mainstream education and business organization in the country—remains strongly in favor of making rigorous, standard measures of student achievement available.

The most recent polls show that two-thirds of the public favor the Presi-

dent's proposal—even more are in favor of the general approach that is in this bill.

Though two districts have decided not to administer the reading exam, all 15 original districts are still planning to administer at least the math test and all 7 States that have signed up remain on board for both exams.

Contrary to what is being said, I do not think there has been any major controversy about the NAEP tests we are planning to use as models for the new ones—after all, pretty much everyone can agree on what we expect our children to know about reading and math at fourth and eighth grade.

There is not much that's controversial about reading a paragraph from Charlotte's Web, or figuring out a word problem in math.

The benefits of a voluntary national test are clear to the parents and teachers who are most determined to see better schools for their children.

Let us allow State and local communities to decide for themselves, rather than making the decision for them here in Washington.

Right now, many States currently offer tests and some are quite good—but they have no common standard and many mislead parents into thinking their children are doing better than they actually are.

Under the new approach, many students would struggle and even fail at first, it's true. But, through the combined efforts of their teachers, parents, and community leaders, far more than anyone expected beforehand would eventually succeed—it's happening in Milwaukee and Philadelphia already.

The voluntary national tests are about setting high expectations for all children, measuring progress in a way that's widely accepted, and demanding accountability for improvements that we all know are needed. They are not about treating minorities unfairly or usurping local and parental control over what is taught in school, which I would never support.

With a common measure of progress it becomes increasingly possible to win additional financial support so desperately needed—it is a necessary step. Voluntary national tests would provide parents new insight so they could push hard for improvements in our public schools that might otherwise not occur.

Support in the Senate remains solidly in favor of the compromise approach to developing a voluntary national test.

Faced with a choice between banning the tests and transferring control to an independent board, 87 Senators less than a month ago voted in favor of developing the tests under the governing board.

I recently worked with 43 Senators to sign a very strong letter pledging to filibuster the conference report if it banned development of the tests before States or districts could decide. This support overwhelms the opposition of a

small part of the Senate, led by Senator ASHCROFT.

If necessary, this is more than enough to block consideration of the conference report or support a Presidential veto—regardless of how the House votes.

By Mr. HARKIN (for himself, Mr. DASCHLE, Mr. LEAHY, and Mr. JOHNSON):

S. 1264. A bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through enhanced enforcement; to the Committee on Agriculture, Nutrition, and Forestry.

THE FOOD SAFETY ENFORCEMENT ENHANCEMENT ACT OF 1997

Mr. HARKIN. Mr. President, today, I along with Senators LEAHY, DASCHLE, and JOHNSON will introduce legislation to enhance the enforcement of our Nation's meat and poultry inspection laws and preserve consumer confidence in the safety of the food they eat. Earlier this year, Americans were stunned by the recall of 25 million pounds of hamburger. They were further amazed when they learned that the Secretary of Agriculture does not have the authority to demand a recall of adulterated product. He does not even have the authority to impose civil fine on a company which knowingly or repeatedly violates food safety laws.

Given the recent number of E. coli outbreaks across the country, Americans are demanding that we do more to prevent food-borne contamination and to stop it in its tracks once an outbreak has been identified. Farmers and ranchers expect us to do more to protect consumer confidence in the products from which they make their hard-earned living.

This legislation I am introducing, which has been developed in cooperation with the Secretary of Agriculture, will give the USDA important new tools to enforce our food safety laws. The legislation would require processors and handlers to notify the USDA of the existence of adulterated meat and poultry products, allow the Secretary to recall adulterated products, and give him the ability to levy civil penalties.

Currently USDA is limited to the atomic bomb of food safety tools. The Secretary can request a recall of product which is suspected to be tainted, withdraw inspection from a processing plant, and issue press releases alerting consumers. In the case of Hudson, a company went out of business, several people were hospitalized and consumer confidence in beef products was shaken. Clearly we need other tools for the USDA to address food safety concerns short of such extreme measures.

The Secretary already has civil penalty authority under 11 other statutes. He can issue civil penalties for the abuse of a circus elephant, but not for the shipment of adulterated meat. In addition, 68 percent of States with

State meat inspection systems have civil penalty authority. The number of states with mandatory E. coli 0157:H7 reporting requirements has more than doubled since 1992.

To be sure, we cannot guarantee that the new enforcement powers in this legislation would have prevented the Hudson recall from occurring or that they will prevent future outbreaks. But mandatory reporting of adulterated meat and mandatory recall authority just makes good sense. With these powers, the USDA will be able to respond more quickly to ensure public safety and consumer confidence.

I view this bill, however, as only the beginning of a process to identify needs in the meat and poultry food chain that can lead to enhanced public safety. All sectors of the food system, from the producer to the consumer need to take responsibility for improved safety. Real food safety cannot be achieved by any one method. We need multiple defenses, using each to their maximum potential. To lower the incidence of food-borne illness we must take a number of steps: Additional research into the way that food-borne pathogens infect animals, remain in the meat products and cause illness in humans; increased research into treatments of food-borne illnesses; improved identification and regulation of hazard points in the production and processing processes; electronic pasteurization as a means of actually reducing pathogens in meat and poultry products; and consumer education on the proper handling and preparation of meat to reduce the risk of illness.

We are currently making progress toward improving food safety. The new Hazard Analysis Critical Control Points [HACCP] meat inspection system will begin to go into effect in 1998. This new science-based inspection system will specifically target E. coli and salmonella in the meat processing system and is designed to prevent, not just identify contamination. We need to get this system in place and inspectors trained as fast and thoroughly as possible.

Clearly we need to do more. The events of the past few months underscore that need. We cannot sit around and wait until the next fatal food-safety scare. We have to act proactively and decisively. All sectors of agricultural economy have a stake in ensuring food safety, from the producer to the consumer. I will work closely with consumer advocates, producers and industry to develop a comprehensive package of legislation that will raise the standard of food safety in this country. I believe this bill is a good starting point.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1264

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Food Safety Enforcement Enhancement Act of 1997".

SEC. 2. FOOD SAFETY ENFORCEMENT FOR MEAT AND MEAT FOOD PRODUCTS.

(a) IN GENERAL.—The Federal Meat Inspection Act (21 U.S.C. 601 et seq.) is amended—

(1) by redesignating section 411 (21 U.S.C. 681) as section 414; and

(2) by inserting after section 410 (21 U.S.C. 679a) the following:

"SEC. 411. NOTIFICATION, NONDISTRIBUTION, AND RECALL OF ADULTERATED OR MISBRANDED ARTICLES.

"(a) NOTIFICATION.—A person (other than a household consumer) that has reason to believe that a carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines (referred to in this section as an 'article') transported, stored, distributed, or otherwise handled by the person is adulterated or misbranded shall immediately notify the Secretary, in such manner and by such means as the Secretary may by regulation promulgate, of the identity and location of the article.

"(b) NONDISTRIBUTION AND RECALL.—

"(1) VOLUNTARY ACTIONS.—On receiving the notification under subsection (a) or otherwise, if the Secretary finds that an article is adulterated or misbranded and that there is a reasonable probability that human consumption of the article would present a threat to public health, as determined by the Secretary, the Secretary shall provide all appropriate persons, as determined by the Secretary, that transported, stored, distributed, or otherwise handled the article with an opportunity to—

"(A) cease distribution of the article;

"(B) notify all persons transporting, storing, distributing, or otherwise handling the article, or to which the article has been transported, sold, distributed, or otherwise handled, to immediately cease distribution of the article;

"(C) recall the article; and

"(D) in consultation with the Secretary, provide notice to consumers to whom the article is, or may have been, distributed.

"(2) MANDATORY ACTIONS.—If the person refuses to or does not voluntarily take the actions described in paragraph (1) with respect to an article within the time and in the manner prescribed by the Secretary, the Secretary shall, by order, require the person to immediately—

"(A) cease distribution of the article; and

"(B) notify all persons transporting, storing, distributing, or otherwise handling the article, or to which the article has been transported, sold, distributed, or otherwise handled, to immediately cease distribution of the article.

"(3) NOTICE TO CONSUMERS.—The Secretary shall, as the Secretary considers necessary, provide notice to consumers to whom the article was, or may have been, distributed.

"(4) NONDISTRIBUTION BY NOTIFIED PERSONS.—A person transporting, storing, distributing, or otherwise handling the article, or to which the article has been transported, sold, distributed, or otherwise handled, that is notified under paragraph (1)(B) or (2)(B) shall immediately cease distribution of the article.

"(c) INFORMAL HEARING ON ORDER.—

"(1) IN GENERAL.—The Secretary shall provide a person subject to an order under subsection (b) with an opportunity for an informal hearing (pursuant to such rules or regulations as the Secretary shall prescribe) on the actions required by the order and on why the article that is the subject of the order should not be recalled.

"(2) TIMING.—The Secretary shall hold the informal hearing as soon as practicable, but



not later than 2 days, after the issuance of the order.

“(d) RECALL OR OTHER ACTIONS.—

“(1) IN GENERAL.—If, after providing an opportunity for an informal hearing under subsection (c), the Secretary determines that there is a reasonable probability that human consumption of the article that is the subject of an order under subsection (b) presents a threat to public health, the Secretary may—

“(A) amend the order to require recall of the article or other appropriate action;

“(B) specify a timetable during which the recall will occur;

“(C) require periodic reports to the Secretary describing the progress of the recall; and

“(D) provide notice to consumers to whom the article is, or may have been, distributed.

“(2) VACATION OF ORDER.—If, after providing an opportunity for an informal hearing under subsection (c), the Secretary determines that adequate grounds do not exist to continue the actions required by the order, the Secretary shall vacate the order.

“(e) ADDITIONAL REMEDIES.—The remedies provided in this section shall be in addition to any other remedies that may be available.

#### “SEC. 412. REFUSAL OR WITHDRAWAL OF INSPECTION OF ESTABLISHMENTS.

“(a) IN GENERAL.—The Secretary may, for such period, or indefinitely, as the Secretary considers necessary to carry out this Act, refuse to provide or withdraw inspection under title I with respect to an establishment if the Secretary determines, after opportunity for a hearing on the record is provided to the applicant for, or recipient of, inspection, that the applicant or recipient, or any person responsibly connected with the applicant or recipient (within the meaning of section 401), has committed a willful violation or repeated violations of this Act (including a regulation promulgated under this Act).

“(b) DENIAL OR SUSPENSION OF INSPECTION PENDING HEARING.—The Secretary may deny or suspend inspection under title I, pending opportunity for an expedited hearing, with respect to an action under subsection (a), if the Secretary determines that the denial or suspension is in the public interest to protect the health or welfare of consumers or to ensure the effective performance of an official duty under this Act.

“(c) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A determination and order of the Secretary with respect to the refusal or withdrawal of inspection under this section shall be final and conclusive unless, not later than 30 days after the effective date of the order, the affected applicant for, or recipient of, inspection—

“(A) files a petition for judicial review of the order; and

“(B) simultaneously sends a copy of the petition by certified mail to the Secretary.

“(2) REFUSAL OR WITHDRAWAL OF INSPECTION PENDING REVIEW.—Inspection shall be refused or withdrawn as of the effective date of the order pending any judicial review of the order unless the Secretary directs otherwise.

“(3) VENUE; RECORD.—Judicial review of the order shall be—

“(A) in—

“(i) the United States court of appeals for the circuit in which the applicant for, or recipient of, inspection resides or has its principal place of business; or

“(ii) the United States Court of Appeals for the District of Columbia; and

“(B) on the record on which the determination and order are based.

“(d) ADDITIONAL REMEDIES.—The remedies provided in this section shall be in addition to any other remedies that may be available.

#### “SEC. 413. CIVIL PENALTIES.

“(a) IN GENERAL.—

“(1) ASSESSMENT.—The Secretary may assess a civil penalty against a person that violates this Act (including a regulation promulgated or order issued under this Act) of not more than \$100,000 for each violation.

“(2) SEPARATE OFFENSES.—Each violation and each day during which a violation continues shall be a separate offense.

“(3) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary shall not assess a civil penalty under this section against a person unless the person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

“(4) AMOUNT.—The amount of a civil penalty under this section shall be—

“(A) assessed by the Secretary by written order, taking into account—

“(i) the gravity of the violation;

“(ii) the degree of culpability;

“(iii) the size and type of the business; and

“(iv) any history of prior offenses under this Act; and

“(B) reviewed only in accordance with subsection (b).

“(b) JUDICIAL REVIEW.—

“(1) IN GENERAL.—An order assessing a civil penalty against a person under subsection (a) shall be final and conclusive unless the person—

“(A) not later than 30 days after the effective date of the order, files a petition for judicial review in—

“(i) the United States court of appeals for the circuit in which the person resides or has its principal place of business; or

“(ii) the United States Court of Appeals for the District of Columbia; and

“(B) simultaneously sends a copy of the petition by certified mail to the Secretary.

“(2) RECORD.—The Secretary shall promptly file in the court a certified copy of the record on which the violation was found and the civil penalty assessed.

“(c) COLLECTION ACTION FOR FAILURE TO PAY ASSESSMENT.—

“(1) REFERRAL TO ATTORNEY GENERAL.—If a person fails to pay a civil penalty after the order assessing the civil penalty has become final and unappealable, the Secretary shall refer the matter to the Attorney General.

“(2) ACTION BY ATTORNEY GENERAL.—The Attorney General shall bring a civil action to recover the amount of the civil penalty in United States district court.

“(3) SCOPE OF REVIEW.—In the collection action, the validity and appropriateness of the order of the Secretary imposing the civil penalty shall not be subject to review.

“(d) REFUSAL OR WITHDRAWAL OF INSPECTION PENDING PAYMENT.—If a person fails to pay the amount of a civil penalty after the order assessing the civil penalty becomes final and unappealable, the Secretary may refuse to provide or withdraw inspection under title I of the person until the civil penalty is paid or until the Secretary directs otherwise.

“(e) PENALTIES IN LIEU OF OTHER ACTIONS.—Nothing in this Act requires the Secretary to report for prosecution, or for the institution of an action, a violation of this Act if the Secretary believes that the public interest will be adequately served by assessment of a civil penalty.

“(f) ADDITIONAL REMEDIES.—The remedies provided in this section shall be in addition to any other remedies that may be available.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1 of the Federal Meat Inspection Act (21 U.S.C. 601) is amended by adding at the end the following:

“(w) PERSON.—The term ‘person’ means any individual, partnership, corporation, association, or other business unit.”.

(2) The Federal Meat Inspection Act (21 U.S.C. 601 et seq.) is amended—

(A) by striking “person, firm, or corporation” each place it appears and inserting “person”;

(B) by striking “persons, firms, and corporations” each place it appears and inserting “persons”;

(C) by striking “persons, firms, or corporations” each place it appears and inserting “persons”.

#### SEC. 3. FOOD SAFETY ENFORCEMENT FOR POULTRY AND POULTRY FOOD PRODUCTS.

The Poultry Products Inspection Act (21 U.S.C. 451 et seq.) is amended—

(1) in the first sentence of section 5(c)(1) (21 U.S.C. 454(c)(1))—

(A) by striking “, by thirty days prior to the expiration of two years after enactment of the Wholesome Poultry Products Act,”; and

(B) by striking “sections 1-4, 6-10, and 12-22 of this Act” and inserting “sections 1 through 4, 6 through 10, 12 through 22, and 31 through 33”; and

(2) by adding at the end the following:

#### “SEC. 31. NOTIFICATION, NONDISTRIBUTION, AND RECALL OF ADULTERATED OR MISBRANDED ARTICLES.

“(a) NOTIFICATION.—A person (other than a household consumer) that has reason to believe that any poultry or poultry product (referred to in this section as an ‘article’) transported, stored, distributed, or otherwise handled by the person is adulterated or misbranded shall immediately notify the Secretary, in such manner and by such means as the Secretary may by regulation promulgate, of the identity and location of the article.

“(b) NONDISTRIBUTION AND RECALL.—

“(1) VOLUNTARY ACTIONS.—On receiving notification under subsection (a) or otherwise, if the Secretary finds that an article is adulterated or misbranded and that there is a reasonable probability that human consumption of the article would present a threat to public health, as determined by the Secretary, the Secretary shall provide all appropriate persons, as determined by the Secretary, that transported, stored, distributed, or otherwise handled the article with an opportunity to—

“(A) cease distribution of the article;

“(B) notify all persons transporting, storing, distributing, or otherwise handling the article, or to which the article has been transported, sold, distributed, or otherwise handled, to immediately cease distribution of the article;

“(C) recall the article; and

“(D) in consultation with the Secretary, provide notice to consumers to whom the article is, or may have been, distributed.

“(2) MANDATORY ACTIONS.—If the person refuses to or does not voluntarily take the actions described in paragraph (1) with respect to an article within the time and in the manner prescribed by the Secretary, the Secretary shall, by order, require the person to immediately—

“(A) cease distribution of the article; and

“(B) notify all persons transporting, storing, distributing, or otherwise handling the article, or to which the article has been transported, sold, distributed, or otherwise handled, to immediately cease distribution of the article.

“(3) NOTICE TO CONSUMERS.—The Secretary shall, as the Secretary considers necessary, provide notice to consumers to whom the article was, or may have been, distributed.

“(4) NONDISTRIBUTION BY NOTIFIED PERSONS.—A person transporting, storing, distributing, or otherwise handling the article, or to which the article has been transported, sold, distributed, or otherwise handled, that

is notified under paragraph (1)(B) or (2)(B) shall immediately cease distribution of the article.

“(C) INFORMAL HEARING ON ORDER.—

“(1) IN GENERAL.—The Secretary shall provide a person subject to an order under subsection (b) with an opportunity for an informal hearing (pursuant to such rules or regulations as the Secretary shall prescribe) on the actions required by the order and on why the article that is the subject of the order should not be recalled.

“(2) TIMING.—The Secretary shall hold the informal hearing as soon as practicable, but not later than 2 days, after the issuance of the order.

“(d) RECALL OR OTHER ACTIONS.—

“(1) IN GENERAL.—If, after providing an opportunity for an informal hearing under subsection (c), the Secretary determines that there is a reasonable probability that human consumption of the article that is the subject of an order under subsection (b) presents a threat to public health, the Secretary may—

“(A) amend the order to require recall of the article or other appropriate action;

“(B) specify a timetable during which the recall will occur;

“(C) require periodic reports to the Secretary describing the progress of the recall; and

“(D) provide notice to consumers to whom the article is, or may have been, distributed.

“(2) VACATION OF ORDER.—If, after providing an opportunity for an informal hearing under subsection (c), the Secretary determines that adequate grounds do not exist to continue the actions required by the order, the Secretary shall vacate the order.

“(e) ADDITIONAL REMEDIES.—The remedies provided in this section shall be in addition to any other remedies that may be available.

**“SEC. 32. REFUSAL OR WITHDRAWAL OF INSPECTION OF ESTABLISHMENTS.**

“(a) IN GENERAL.—The Secretary may, for such period, or indefinitely, as the Secretary considers necessary to carry out this Act, refuse to provide or withdraw inspection under this Act with respect to an establishment if the Secretary determines, after opportunity for a hearing on the record is provided to the applicant for, or recipient of, inspection, that the applicant or recipient, or any person responsibly connected with the applicant or recipient (within the meaning of section 18(a)), has committed a willful violation or repeated violations of this Act (including a regulation promulgated under this Act).

“(b) DENIAL OR SUSPENSION OF INSPECTION PENDING HEARING.—The Secretary may deny or suspend inspection under this Act, pending opportunity for an expedited hearing, with respect to an action under subsection (a), if the Secretary determines that the denial or suspension is in the public interest to protect the health or welfare of consumers or to ensure the effective performance of an official duty under this Act.

“(c) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A determination and order of the Secretary with respect to the refusal or withdrawal of inspection under this section shall be final and conclusive unless, not later than 30 days after the effective date of the order, the affected applicant for, or recipient of, inspection—

“(A) files a petition for judicial review of the order; and

“(B) simultaneously sends a copy of the petition by certified mail to the Secretary.

“(2) REFUSAL OR WITHDRAWAL OF INSPECTION PENDING REVIEW.—Inspection shall be refused or withdrawn as of the effective date of the order pending any judicial review of the order unless the Secretary directs otherwise.

“(3) VENUE; RECORD.—Judicial review of the order shall be—

“(A) in—

“(i) the United States court of appeals for the circuit in which the applicant for, or recipient of, inspection resides or has its principal place of business; or

“(ii) the United States Court of Appeals for the District of Columbia; and

“(B) on the record on which the determination and order are based.

“(d) ADDITIONAL REMEDIES.—The remedies provided in this section shall be in addition to any other remedies that may be available.

**“SEC. 33. CIVIL PENALTIES.**

“(a) IN GENERAL.—

“(1) ASSESSMENT.—The Secretary may assess a civil penalty against a person that violates this Act (including a regulation promulgated or order issued under this Act) of not more than \$100,000 for each violation.

“(2) SEPARATE OFFENSES.—Each violation and each day during which a violation continues shall be a separate offense.

“(3) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary shall not assess a civil penalty under this section against a person unless the person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

“(4) AMOUNT.—The amount of a civil penalty under this section shall be—

“(A) assessed by the Secretary by written order, taking into account—

“(i) the gravity of the violation;

“(ii) the degree of culpability;

“(iii) the size and type of the business; and

“(iv) any history of prior offenses under this Act; and

“(B) reviewed only in accordance with subsection (b).

“(b) JUDICIAL REVIEW.—

“(1) IN GENERAL.—An order assessing a civil penalty against a person under subsection (a) shall be final and conclusive unless the person—

“(A) not later than 30 days after the effective date of the order, files a petition for judicial review in—

“(i) the United States court of appeals for the circuit in which the person resides or has its principal place of business; or

“(ii) the United States Court of Appeals for the District of Columbia; and

“(B) simultaneously sends a copy of the petition by certified mail to the Secretary.

“(2) RECORD.—The Secretary shall promptly file in the court a certified copy of the record on which the violation was found and the civil penalty assessed.

“(c) COLLECTION ACTION FOR FAILURE TO PAY ASSESSMENT.—

“(1) REFERRAL TO ATTORNEY GENERAL.—If a person fails to pay a civil penalty after the order assessing the civil penalty has become final and unappealable, the Secretary shall refer the matter to the Attorney General.

“(2) ACTION BY ATTORNEY GENERAL.—The Attorney General shall bring a civil action to recover the amount of the civil penalty in United States district court.

“(3) SCOPE OF REVIEW.—In the collection action, the validity and appropriateness of the order of the Secretary imposing the civil penalty shall not be subject to review.

“(d) REFUSAL OR WITHDRAWAL OF INSPECTION PENDING PAYMENT.—If a person fails to pay the amount of a civil penalty after the order assessing the civil penalty becomes final and unappealable, the Secretary may refuse to provide or withdraw inspection under this Act of the person until the civil penalty is paid or until the Secretary directs otherwise.

“(e) PENALTIES IN LIEU OF OTHER ACTIONS.—Nothing in this Act requires the Sec-

retary to report for prosecution, or for the institution of an action, a violation of this Act if the Secretary believes that the public interest will be adequately served by assessment of a civil penalty.

“(f) ADDITIONAL REMEDIES.—The remedies provided in this section shall be in addition to any other remedies that may be available.”.

Mr. DASCHLE. Mr. President, today I am pleased to join Senator HARKIN and others to introduce legislation that would strengthen the U.S. Department of Agriculture's ability to protect the public from contaminated meat and poultry products. The United States has the safest food in the world, and this USDA-supported food safety initiative, the Food Safety Enforcement Enhancement Act of 1997, would take important steps to ensure it stays that way.

I have considered food safety policy to be of great significance for many years. As chair of the Agriculture Subcommittee on Agriculture Research, Conservation, Forestry and General Legislation in 1993 and 1994, I held a number of hearings on meat and poultry inspection, including a 1993 hearing to consider the *E. coli* crisis in the Pacific Northwest. Subsequent to a series of congressional hearings related to that incident, Senator LEAHY and I introduced a bill requiring USDA to replace its old meat inspection process with a modern system called the Hazard Analysis and Critical Control Point System [HACCP].

HACCP is a major improvement over the old system because it uses scientific understanding of harmful bacteria to prevent contamination from occurring in the first place. Inspectors observe operations at critical control points and test for pathogens in samples scientifically collected at meat and poultry processing plants.

Because USDA needs the tools to respond swiftly and appropriately to violations, our legislation also would have allowed USDA to fine meat packing plants and processors for safety violations, and order mandatory recalls of contaminated meat and poultry products.

Congress did not pass that bill, but USDA was able to implement many of the bill's provisions through administrative means, including the new HACCP system of meat and poultry inspection. USDA did not have the authority, however, to implement provisions of the bill that would have strengthened the agency's regulatory authority. Today USDA lacks the regulatory tools that were intended to complement the new inspection system.

The Food Safety Enforcement Enhancement Act of 1997 would amend the Federal Meat Inspection Act [FMIA] and the Poultry Products Inspection Act [PPIA] by adding three new enforcement sections: First, to provide for mandatory recall of meat and poultry products; second, to provide more explicit authority to refuse or withdraw inspection; and third, to provide the power to assess civil monetary penalties. This bill would further



ensure that the meat in grocery stores and restaurants is free of *E. coli*, salmonella, and other harmful bacteria.

Civil fines and mandatory recall authority are important improvements, and both are employed by other Federal agencies. Civil fines deter undesirable practices, can be imposed more quickly than criminal penalties or inspection withdrawal, and can be tailored to specific cases. The Food Safety Enforcement Enhancement Act of 1997 is careful to combine ample due process protection with the potential for fines. A hearing before an independent administrative law judge is one of the first steps in the process, and an appeals mechanism is also part of the process.

Mandatory recall is an important improvement to a system that currently relies on voluntary recalls by industry. Although the industry historically has cooperated by voluntarily recalling products when food safety has been in question, USDA needs to be able to swiftly recall meat or poultry in the event of voluntarism one day fails.

Science allows us to know more today about food safety than ever before in history and to have higher standards than ever before. It is imperative that we use this science to identify and implement the most effective, efficient production practices. The Food Safety Enforcement Enhancement Act of 1997 surely would enable USDA to take great strides in using HACCP to this end.

By Mr. DODD:

S. 1265. A bill to amend the Occupational Safety and Health Act of 1970 to expand the provisions to include construction safety requirements; to the Committee on Labor and Human Resources.

THE CONSTRUCTION SAFETY, HEALTH, AND  
EDUCATION IMPROVEMENT ACT OF 1997

Mr. DODD. Mr. President, today I am again introducing the Construction Safety, Health, and Education Improvement Act of 1997. In 1970, the passage of the Occupational Safety and Health Act signified a pledge to American workers that workplaces would be safe and healthy. Sadly, 27 years later, we still have a long way to go to fulfill that promise.

Nationally, more than 6,200 people died from work-related injuries in 1995, as average of 17 people each day. More than 1,000 of those deaths were in the construction industry. In Connecticut, construction deaths remain a significant fact of life for men and women who work in this field. But these are not simply statistics. These deaths represent families and friends losing loved ones.

Construction tends to involve some of the most hazardous work done by workers including roofing, excavation, and trenching. The industry faces many challenges in providing a safe work environment. Often, the worksite changes from week to week, or day to day, and workers and subcontractors

come and go as a given project moves forward.

I will never forget the tragedy that occurred at a construction site in my home State more 10 years ago. Twenty-eight people lost their lives during the construction of an apartment building called L'Ambiance Plaza in Bridgeport, CT, when the floors of the building collapsed. Ten years have not healed the wounds from that tragedy. I attended a memorial service earlier this year, and saw many of the same people I saw 10 years ago when this tragedy occurred. They were older, but still carry grief over the loss of a spouse, parent, or friend.

Construction disasters are sadly not isolated to a given State or region. In just the last few months, construction workers in Orlando, Chicago, Indianapolis, Brooklyn, Huntington Beach, and Washington, DC, to name just a few, lost their lives in work related accidents.

The bill I am offering today is straightforward and offers common-sense solutions. I introduced similar legislation in each of the past five Congresses. An office of construction, safety, health and education would be established within OSHA tasked to identify construction employees with a high incidence of injury and non-compliance. The office would establish training in construction safety for inspectors, establish model compliance programs and a toll-free number for reporting safety concerns. The bill would require the development and implementation of a written safety and health plan for each construction project, including an analysis of hazardous activities involved in the project and assurances that all employees are notified of these conditions.

Whether 1 person dies or 25 die, any life lost is one too many. We should not suffer another workplace tragedy before we put in place measures to safeguard construction sites. I urge my colleagues to join me in sponsoring this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1265

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Construction Safety, Health, and Education Improvement Act of 1997".

**SEC. 2. OFFICE OF CONSTRUCTION SAFETY, HEALTH, AND EDUCATION.**

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended—

- (1) by striking sections 30, 31, and 34;
- (2) by redesignating sections 32 through 33 as sections 34 and 35, respectively; and
- (3) by inserting after section 29 the following:

**"SEC. 30. OFFICE OF CONSTRUCTION SAFETY, HEALTH, AND EDUCATION.**

"(a) ESTABLISHMENT.—There is established in the Occupational Safety and Health Ad-

ministration an Office of Construction Safety, Health, and Education (hereinafter in this section referred to as the 'Office') to ensure safe and healthful working conditions in the performance of construction work.

"(b) DUTIES.—The Secretary shall—

"(1) identify construction employers that have high fatality rates or high lost workday injury or illness rates or who have demonstrated a pattern of noncompliance with safety and health standards, rules, and regulations;

"(2) develop a system for notification of employers identified under paragraph (1);

"(3) establish training courses and curriculum for the training of inspectors and other persons with duties related to construction safety and health who are employed by the Occupational Safety and Health Administration;

"(4) establish model compliance programs for construction safety and health standards and assist employers, employees, and organizations representing employers and employees in establishing training programs appropriate to such standards; and

"(5) establish a toll-free line on which reports, complaints, and notifications required under this Act may be made.".

**SEC. 3. CONSTRUCTION SAFETY AND HEALTH PLANS AND PROGRAMS.**

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (as amended by section 2) is further amended by adding after section 30 the following:

**"SEC. 31. CONSTRUCTION SAFETY AND HEALTH PLANS AND PROGRAMS.**

"(a) PROJECT CONSTRUCTOR.—The Secretary shall, by regulation, require each construction project to have an individual or entity (hereinafter referred to as the 'project constructor') that is responsible for the establishment of the safety and health plan (as described in subsection (b)) for such project and for ensuring that the plan is carried out. Such regulations shall require that—

"(1) if only one general or prime contractor exists on a construction project, such contractor shall be the project constructor, unless such contractor designates another entity with such entity's consent to be the project constructor; and

"(2) if a construction project has more than one general or prime contractor, the construction owner shall be the project constructor unless such construction owner designates another entity with such entity's consent to be the project constructor.

**"(b) CONSTRUCTION SAFETY AND HEALTH PLAN.—**

"(1) IN GENERAL.—The Secretary shall, by regulation, require that the project constructor for a construction project develop and implement a written construction safety and health plan for the construction project (hereinafter in this section referred to as the 'plan') to protect employees against hazards which may occur at such project.

"(2) PLAN ELEMENTS.—The plan shall—

"(A) include a hazard analysis and construction process protocol which shall apply to each worksite of the project;

"(B) include assurance that each construction employer on the project has a safety and health program which complies and is coordinated with the plan and the requirements of subsection (c);

"(C) provide for regular inspections of the worksite to monitor the implementation of the plan;

"(D) include a method for notifying affected construction employers of any hazardous conditions at a construction worksite or of noncompliance by an employer with the project safety and health plan;

"(E) include a method for responding to the request of any construction employer,

employee, or employee representative, for an inspection of a construction worksite to determine if an imminent danger exists and to stop work at, or remove affected employees from, an area in which such a danger exists;

“(F) provide assurance that a competent person is on site at all times to oversee the implementation of the safety plan and coordinate activities among employers; and

“(G) provide assurance that the plan will be reviewed and modified as the project addresses new safety concerns.

“(3) AVAILABILITY.—Copies of the plan shall be made available to each construction employer prior to commencement of construction work by that employer.

“(C) APPLICATION.—

“(1) IN GENERAL.—The Secretary, by regulation, may modify the requirements of this section, or portions thereof, as such requirements apply to certain types of construction work or operations where the Secretary determines that, in light of the nature of the risks faced by employees engaged in such work or operation, such a modification would not reduce the employees' safety and health protection. In making such modification, the Secretary shall take into account the risk of death or serious injury or illness, and the frequency of fatalities and the lost work day injury rate attendant to such work or operations.

“(2) EMERGENCY WORK.—If it is necessary to perform construction work on a worksite immediately in order to prevent injury to persons, or substantial damage to property, and such work must be conducted before compliance with the requirements of the regulations under subsections (a) and (b) can be made, the Secretary shall be given notice as soon as practicable of such work. Compliance with such requirements shall then be made as soon as practicable thereafter.”

#### SEC. 4. STATE CONSTRUCTION SAFETY AND HEALTH PLANS.

Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) is amended by adding at the end the following:

“(i) Any State plan that covers construction safety and health shall contain requirements which, and the enforcement of which, are, and will be, at least as effective, in providing safe and healthful employment and places of employment in the construction industry as the requirements contained in subsection (c), and the requirements imposed by, and enforced under, this Act and section 107 of the Contract Work Hours Standards Act (40 U.S.C. 333), including requirements relating to construction safety and health plans.”

#### SEC. 5. ENFORCEMENT.

(a) CITATIONS.—Section 9(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 658(a)) is amended by inserting “, 8, or 31” after “section 5”.

(b) PROJECT CONSTRUCTORS.—Section 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 658) is amended by adding at the end the following:

“(e) For purposes of this section and sections 8, 10, 11, and 17 a project constructor shall be considered an employer.”

#### SEC. 6. REPORTS TO CONGRESS.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (as amended by section 3) is further amended by adding after section 31 the following:

##### “SEC. 32. REPORTS TO CONGRESS.

“The Secretary shall include in the annual report submitted to the President under section 26 additional information on the construction industry as such information relates to the general subjects described in section 26, including the operation of the Office of Construction Safety, Health, and Education.

#### SEC. 7. FEDERAL CONSTRUCTION CONTRACTS.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (as amended by section 6) is further amended by adding after section 32 the following:

##### “SEC. 33. FEDERAL CONSTRUCTION CONTRACTS.

“Not later than 90 days after the date of the enactment of this section, the Secretary shall deliver to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate recommendations regarding legislative changes required to make the safety records (including records of compliance with Federal safety and health laws and regulations) of persons bidding for contracts subject to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) a criterion to be considered in the awarding of such contracts.”

#### SEC. 8. DEFINITIONS.

Section 3 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652) is amended by adding at the end thereof the following:

“(15) For purposes of sections 30 and 31, the following terms shall have the following meanings:

“(A) The term ‘construction employer’ means an employer as defined in paragraph (5) (including an employer who has no employees) who is engaged primarily in the building and construction industry or who performs construction work under a contract with a construction owner, except that a utility providing or receiving mutual assistance in the case of a natural or man-made disaster shall not be considered a construction employer.

“(B) The term ‘construction owner’ means a person who owns, leases or has effective control over property with or without improvements, a structure, or other improvement on real property on which construction work is being, or will be, performed.

“(C) The term ‘construction project’ means all construction work by one or more construction employers which is performed for a construction owner and which is described in work orders, permits, requisitions, agreements, and other project documents.

“(D) The term ‘construction work’ means work for construction, alteration, demolition, or repair, or any combination thereof, including painting and decorating, but does not include work performed under a contract between a construction employer and a homeowner for work on the homeowner's own residence, or routine maintenance and upkeep performed at least monthly, and such term shall include work performed under a contract between a construction employer and an agency of the United States or any State or political subdivision of a State.

“(E) The term ‘construction worksite’ means a site within a construction project where construction work is performed by one or more construction employers.”

#### SEC. 9. RELATIONSHIP TO EXISTING LAW AND REGULATIONS.

(a) IN GENERAL.—Nothing contained in the amendments made by this Act or the regulations issued to carry out the amendments shall limit the application of, or lessen, any of the requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Contract Work Hours Standards Act (40 U.S.C. 327 et seq.), or the standards or regulations issued by the Secretary of Labor to carry out either such Act.

(b) PROJECT CONSTRUCTORS.—The presence and duties of a project constructor or a project safety coordinator on a project shall not in any way diminish the responsibilities of construction employers under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) for the safety and health of their employees.

#### ADDITIONAL COSPONSORS

S. 193

At the request of Mr. GLENN, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 193, a bill to provide protections to individuals who are the human subject of research.

S. 714

At the request of Mr. AKAKA, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 714, a bill to make permanent the Native American Veteran Housing Loan Pilot Program of the Department of Veterans Affairs.

S. 801

At the request of Mr. GRAHAM, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 801, a bill to amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs, and for other purposes.

S. 969

At the request of Mr. D'AMATO, the name of the Senator from Rhode Island [Mr. REED] was added as a cosponsor of S. 969, a bill ordering the preparation of a Government report detailing injustices suffered by Italian-Americans during World War II, and a formal acknowledgment of such injustices by the President.

S. 1008

At the request of Mr. DURBIN, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1008, a bill to amend the Internal Revenue Code of 1986 to provide that the tax incentives for alcohol used as a fuel shall be extended as part of any extension of fuel tax rates.

S. 1105

At the request of Mr. DORGAN, his name was added as a cosponsor of S. 1105, a bill to amend the Internal Revenue Code of 1986 to provide a sound budgetary mechanism for financing health and death benefits of retired coal miners while ensuring the long-term fiscal health and solvency of such benefits, and for other purposes.

S. 1195

At the request of Mr. CHAFEE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1195, a bill to promote the adoption of children in foster care, and for other purposes.

S. 1212

At the request of Mr. DORGAN, the names of the Senator from North Dakota [Mr. CONRAD], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 1212, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to clarify that records of arrival or departure are not required to be collected for purposes of the automated entry-exit control system developed under 110 of such Act for Canadians who are not